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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DENVER, COLORADO Date: MAR 29 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. The record reflects that on July 24, 2002, the applicant was convicted of burglary, in the Superior and Municipal Court of California, County of San Bernardino. The applicant was subsequently found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a naturalized United States (U.S.) citizen and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may adjust her status to that of a lawful permanent resident and reside with her husband and children in the United States.

The acting district director concluded the applicant had failed to establish that extreme hardship would be imposed upon her U.S. citizen husband or children. The application was denied accordingly.

On appeal, the applicant asserts that her husband and two children would suffer extreme hardship in the United States, or in the alternative in Mexico, if the applicant were removed from the United States. The applicant additionally asserts that her arrest and conviction for burglary, as well as her subsequent failure to comply with a court order, were the result of misunderstandings and mistakes for which she is sorry.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> > (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The AAO notes that the acting district director's decision balances the favorable and unfavorable factors in the applicant's case. The AAO notes further that a balancing of favorable and unfavorable factors is not relevant to the initial determination of whether extreme hardship has been established. Rather, a balancing of factors relates to whether or not discretion should be exercised once extreme hardship has been found. In the present case, the acting district director's decision found that the evidence in the record failed to establish that the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed from the United States. The

AAO notes that it was therefore unnecessary for the acting district director to address discretionary favorable versus unfavorable factors in the applicant's case.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The present record contains a letter from the applicant's husband (Mr [redacted] stating that he and his nine and six year old children would suffer emotional, spiritual, physical and financial hardship if the applicant were removed from the United States. The letter states that Mr. [redacted] nd the children depend on the applicant for "[a]ll of the things a mother, a wife, and a confident [sic] provides at home." Mr [redacted] states further that, through occasional work, the applicant also contributes to family expenses. Mr. [redacted] also states that he will move to Mexico if the applicant does not obtain a waiver of inadmissibility, and that although he is a native of Mexico, he has lived in the U.S. for 26 years, and would find it difficult to readjust to life and customs in Mexico. In addition, Mr. [redacted] states that he would be unable to earn a decent salary in Mexico and that he and his family would live in substandard conditions. Mr [redacted] states further that his children have become monolingual and that they would not be able to pursue higher education opportunities in Mexico. The supporting documentation contained in the record consists of the birth certificates for the applicant's now, 7-year-old daughter and 10-year-old son, and the applicant's marriage certificate. The record contains no corroborative evidence or detailed information relating to educational, social, or economic conditions in Mexico, or how those conditions would relate to the applicant's family. The record also contains no corroborating evidence regarding the emotional, physical, or financial effects that the applicant's removal would have on her husband and children.

In *Shooshtary v. INS,* 39 F.3d 1049, 1051, (9th Cir. 1994), the Ninth Circuit Court of Appeals stated that, "[t]he uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported". The Ninth Circuit stated further that the extreme hardship requirement "[w]as not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." *Id.* Moreover, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship, and in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that based on the evidence contained in the record, the applicant has failed to establish that her husband and children would suffer hardship beyond that normally experienced by family members if the

applicant were removed from the United States. The evidence fails to establish that Mr [redacted] or the applicant's children have any psychological or health conditions, or that any other circumstances exist that would cause them to suffer emotional hardship beyond that normally suffered upon the removal of a family member. Moreover, the AAO notes that Mr. [redacted] is originally from Mexico, and that he speaks the Spanish language. The record contains no information to indicate whether Mr [redacted] as other family members in the United States or in Mexico. In addition, the record contains no evidence to corroborate the applicant's assertions that the applicant's children have become monolingual or that they would face unusual hardship if they moved to Mexico. Furthermore, the general statements regarding the economy and the possibility of financial hardship in Mexico are unsupported by any evidence in the record and fail to establish that Mr. [redacted] and his family would suffer financial hardship that is unusual or beyond that usually expected upon the removal of an alien.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that her husband and children would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.